

EXHIBIT D

N1VsHER1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 HERMÈS INTERNATIONAL. et al.,

5 Plaintiffs,

6 v.

7 22 Civ. 384 (JSR)

8 MASON ROTHSCHILD,

9 Defendant.
10

11 -----x
12 New York, N.Y.
13 January 31, 2023
14 9:30 a.m.

15 Before:

16 HON. JED S. RAKOFF,

17 District Judge
18 -and a Jury-

19 APPEARANCES

20 BAKER & HOSTETLER LLP
21 Attorneys for Plaintiffs
22 BY: DEBORAH A. WILCOX
23 OREN J. WARSHAVSKY
24 GERALD J. FERGUSON

25 HARRIS ST. LAURENT & WECHSCLER LLP
26 Attorneys for Defendant
27 BY: ADAM B. OPPENHEIM
28 JONATHAN A. HARRIS

29 LEX LUMINA PLLC
30 Attorneys for Defendant
31 BY: RHETT O. MILLSAPS, II

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Martin - Cross

1 Q. Today that's correct?

2 A. Yeah.

3 Q. Mr. Martin, there's no evidence that Mr. Rothschild ever
4 told anyone that MetaBirkins came from Hermès, isn't that
5 right?

6 MR. WARSHAVSKY: Objection.

7 THE COURT: Well, as phrased, sustained.

8 BY MR. MILLSAPS:

9 Q. Mr. Martin, are you aware of any evidence that
10 Mr. Rothschild ever told anyone that the MetaBirkins came from
11 Hermès?

12 A. No.

13 Q. Mr. Martin, you were just testifying that Hermès has been
14 damaged by consumer confusion, is that right?

15 A. Yes.

16 Q. What is the evidence of consumer confusion that you have
17 seen?

18 A. I think we have an expert report on consumer confusion. I
19 can also refer to Mr. Bob Chavez' testimony, which if I
20 remember correctly mentioned that some of his students were
21 confused.

22 I have seen articles in the press media saying that
23 this project was made in partnership, made by Hermès, and I
24 anticipate that the people that, when you read a newspaper, you
25 can believe that what is written in the newspaper is true, and

N1vnher6

Estival - Direct

1 Q. If we start with the one on the left of the screen, okay --

2 MR. HARRIS: Ashley, could we undo that. Could we
3 start with the one on the right of the screen.

4 BY MR. HARRIS:

5 Q. If we start with the one on the right of the screen, can
6 you describe, what you are thinking here when you are doing
7 this chair, what the project is.

8 A. Yes. So the initial idea, the project is called "Do Not
9 Sit" because I thought it would be funny to create -- since
10 they're digital chairs you can't actually sit in them, so there
11 is a collection of chairs you can't sit in.

12 So it's kind of like these iconic chairs, this one is
13 a kangaroo chair by Pierre Jeanneret. I kind of made it --
14 since these chairs -- this chair, I think it's like a 1960s
15 chair, that was created in Chandigarh, India. They go for,
16 like, forty, fifty thousand dollars, and they have withstood
17 the test of time for being a wooden chair.

18 So, kind of taking inspiration from Daniel Arsham, I
19 took these future, like, relic-ish chairs that are made of
20 concrete, and I kind of destroyed them a little to show that
21 they do wear and they still stand strong.

22 And then the shroud is kind of funny because at estate
23 sales, if you have ever been to an estate sale, they put this
24 kind of plastic tarp on stuff. That was just kind of building
25 on the idea.

N1vnher6

Estival - Direct

1 Q. Okay. You talked with Pierre Jeanneret.

2 A. Yes.

3 Q. And who is Mr. Jeanneret?

4 A. He is an interior furniture designer, French, that actually
5 created all this furniture for a city in India called
6 Chandigarh. He was given the task of creating all these
7 furniture pieces for the courtroom, people's dwellings, and
8 everything.

9 Q. Now, Mr. Rothschild, you did not go to art school, right?

10 A. Yes.

11 Q. How do you know about Mr. Jeanneret?

12 A. I just like furniture and I like art and I like history. I
13 didn't need to go to school to be, like, taught about cool
14 things.

15 Q. Why did you put the holes in the chair?

16 A. I wanted to show a little bit of destruction, you know,
17 like, these things don't withstand the test of time in, like,
18 their purest form. You know, they are not going to stay in,
19 like, mint condition. I wanted to show is that there is a
20 little bit of, you know, wear and tear that goes with being
21 around for a long time.

22 Q. This chair, the one we are looking at right here, did it
23 sell?

24 A. Yes.

25 Q. Is that last sold 1 Ether, is that the price?

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Estival - Direct

1 A. Yes.

2 Q. And Ether is a currency that can be used to by NFTs, right?

3 A. Right. On the Ethereum blockchain.

4 Q. The Etherium blockchain.

5 Can we look at -- if this chair were to be resold by
6 the buyer, would you get a follow-up royalty?

7 A. I can't remember if there is a royalty set for this. But
8 if there was, yes. I am not sure if I set a royalty for this
9 one in particular.

10 Q. Was that something different about NFTs that artists could
11 get resale royalties?

12 A. Yeah. That -- I feel like that was the driving force in
13 how NFTs got their popularity was the ability to, you know,
14 give back to artists in perpetuity, unlike how traditional art
15 is, where, you know, you have, like, Basquiat and stuff, and
16 their family won't be able to claim royalties on the millions
17 of dollars that their artwork sells for.

18 Q. And do you recall how much money it was worth at ballpark
19 at this time?

20 A. I think maybe 3,000, 4,000.

21 Q. And then --

22 MR. HARRIS: Ashley, could you please just slide over
23 and show the other chair.

24 BY MR. HARRIS:

25 Q. All right. What is the thought process behind this chair?

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Estival - Direct

1 A. Similar idea as you can see from the first one, but this is
2 a Toto sofa or a Toto chair by Michael Duporoy, also a very
3 popular chair. We have one at home. And it's kind of done
4 with like a little bit of concrete. You can kind of see the
5 rebar through it and a missing piece off that edge.

6 Q. You mentioned when we were talking that Daniel Arsham was
7 also an inspiration along with Mr. Jeanneret?

8 A. Jeanneret did the chair, but in terms of like this art
9 style, Arsham was definitely my inspiration.

10 Q. What types of works does Mr. Arsham do?

11 A. Daniel does mainly works created out of plaster and
12 concrete.

13 Q. Actual concrete?

14 A. Yes.

15 Q. And this is digital?

16 A. This is digital, yeah.

17 Q. This is not a real chair; this is just the image?

18 A. Yes, not a real chair, just an image, created in 3D.

19 Q. When someone buys this image, they are -- when someone buys
20 the NFT, they are -- is it is fair to say they're acquiring
21 this image?

22 A. Yes, they own the image.

23 Q. Now, did you work with somebody else? Did you do this all
24 by yourself?

25 A. No.